

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

**No. 16-cv-0388 JB/SMV
No. 09-cr-2169 JB**

ERNIE MARTINEZ,

Defendant/Movant.

**ORDER LIFTING STAY AND DIRECTING THE PARTIES TO CONFER
AND FILE A JOINT STATEMENT IN LIGHT OF *BECKLES***

THIS MATTER is before the Court sua sponte under Rule 4 of the Rules Governing Section 2255 Proceedings, in light of the U.S. Supreme Court's ruling in *Beckles v. United States*, 580 U.S. ___, No. 15-8544, slip op (March 6, 2017). Movant Ernie Martinez filed a motion, amended motion, and supplemental motion pursuant to 28 U.S.C. § 2255, claiming that he improperly received an enhanced sentence as a career offender under the United States Sentencing Guidelines ("USSG") because the residual clause of USSG § 4B1.2 is unconstitutionally vague under the reasoning in *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015). [CV Docs. 1, 5, 12]; [CR Docs. 58, 62, 69]. After ordering the parties to show cause why the proceedings should not be stayed pending ruling in *Beckles*, the Court so stayed the proceedings. [CV Docs. 14, 17]; [CR Docs. 71, 74]. *Beckles* has been decided, and the Supreme Court has held that the USSG are not subject to a void-for-vagueness challenge. 580 U.S. ___, No. 15-8544, slip op at 5.

Accordingly, the Court will lift the stay and direct the parties to confer on the question of whether the Supreme Court's ruling in *Beckles* is dispositive of all issues raised in this § 2255 proceeding and to file a joint statement advising the Court of the results of their conference. If either party contends that *Beckles* does not dispose of all issues, the statement shall identify the issue or issues that remain for determination by the Court after *Beckles* and the party raising the remaining issue or issues. The parties shall confer and file the joint statement within 14 days of entry of this Order. If neither party claims that an issue remains for adjudication following *Beckles*, the Court will enter an Order dismissing this § 2255 proceeding. If the parties contend that issues still remain for determination, the Court will enter an order setting a schedule for supplemental briefing.

IT IS ORDERED that the stay is lifted and the Parties shall confer on the question of whether the Supreme Court's ruling in *Beckles* is dispositive of all issues raised in this § 2255 proceeding and file a joint statement advising the Court of the results of their conference within **14 days** of entry of this Order.



STEPHAN M. VIDMAR
United States Magistrate Judge